

Notice of Allowability

Application No.

10/058,967

Examiner

Peter J. Vrettakos

Applicant(s)

COSMAN, ERIC R.

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment dated 6-13-05.
2. ☒ The allowed claim(s) is/are 11,13,17,19-28 and 31-38.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 6-18-05.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claim 11 now reads, " A device for ablating tissue comprising:

a guide element;

a rigid elongate tubular member defining a longitudinally extending lumen having a distal opening and a proximal opening, the lumen dimensioned to pass along and over the guide element directed into the tissue, a distal portion of the tubular member having a blunt distal tip, the tubular member comprising a metal tube having an external surface and an electrical insulator configured to electrically insulate a portion of the external surface of the metal tube, an inner metal tube disposed within the metal tube and defining a portion of the lumen, the blunt tip comprising a fluid sealed junction between the metal tube and the inner metal tube;

an electrode disposed at a distal portion of the tubular member and configured to be energized with high frequency energy to thermally ablate the tissue; the electrode comprising an exposed portion of the external surface of the outer metal tube; and

a fluid channel within the tubular member, the fluid channel in fluid communication with a fluid input port and a fluid output port and in thermal communication with the electrode; the fluid channel being located at least in part between the metal tube and the inner metal tube.

Claim 17 now reads, "A system for ablation of tissue in the living body comprising:

a guide element; and

an ablation system including:

an elongate member defining a longitudinal channel having a distal opening and proximal opening, the elongate member being dimensioned to slide along and over the guide element directed into the tissue, a distal portion of the elongate member having a blunt distal tip, the elongate member comprising a metal tube having an external surface and an electrical insulator configured to electrically insulate a portion of the external surface of the metal tube, an inner metal tube disposed within the metal tube and defining a portion of the channel, and the blunt tip comprising a fluid sealed junction between the metal tube and the inner metal tube; and

an electrode at a distal portion of the elongate member and configured to be energized with high frequency energy to ablate the tissue; the electrode comprising an exposed portion of the external surface of the outer metal tube;

a fluid channel within the elongate member the fluid channel in fluid communication with a fluid input port and a fluid output port and in thermal communication with the electrode; the fluid channel being located at least in part between the metal tube and the inner metal tube.

The Examiner's Amendment merely corrected an antecedent error (inner metal tube), and did not change the substance of the claims.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: The prior office action dated 3-11-05 indicated that dependent claims 12, 30, and 34 included allowable subject matter. As a result, the Applicant in the amendment dated 6-13-05 has cancelled these claims and placed their allowable subject matter into independent claims 11 (12), 17 (12), 28 (30), and 38 (34). Therefore, independent claims 11, 17, 28, and 38 and their respective dependent claims are allowed. The application is now in condition for allowance because these four claims constitute all independent claims.

The prior art neglects to disclose the following in the context found in the claim, at least one of which is now found in each independent claim:

1) a device or a system for ablating tissue that includes a tubular member with a metal tube having an external surface and an electrical insulator configured to electrically insulate a portion of the external surface of the metal tube;

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2) a device or a system for ablating tissue that includes an electrode having an exposed portion of the external surface of the outer metal tube or an inner metal tube disposed within the metal tube and defining a portion of the lumen;

3) a blunt distal tip having a fluid sealed junction between the metal tube and the inner tube and the fluid channel being located at least in part between the metal tube and the inner metal tube; or

4) a method for thermal ablation of a target volume where perforating and penetrating includes passing a sharp needle through skin and tissue and positioning includes passing the guide wire through the needle and removing the needle over the guide wire to leave the guide wire in the tract.

Formal drawings are now required. (Handwritten drawings are informal – ex. see figures 12 and 19).

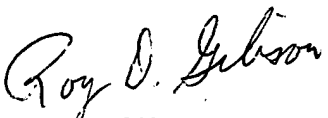
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pete Vrettakos
June 18, 2005



ROY D. GIBSON
PRIMARY EXAMINER